

EXHIBIT K

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 ASHEVILLE DIVISION

4 _____
5 CARYN DEVINS STRICKLAND,)

6 Plaintiff,)

7)

8 -vs-) Case No. 1:20-cv-00066

9)

10 UNITED STATES, et al.,)

11 Defendants.)

12 _____

13
14 *** CONFIDENTIAL ***

15 SUBJECT TO PROTECTIVE ORDER

16 ECF NO. 183

17
18 DEPOSITION OF JAMES N. ISHIDA

19 9:05 a.m. to 5:47 p.m.

20 April 13, 2023

21 Richmond, Virginia

22
23
24 Job No. 49661

25 REPORTED BY: Julia A. Bammel, RPR, CSR

1 Deposition of JAMES N. ISHIDA, taken and
2 transcribed on behalf of the Plaintiff, by and before
3 Julia A. Bammel, RPR, CSR, Notary Public in and for the
4 Commonwealth of Virginia at large, pursuant to the
5 Federal Rules of Civil Procedure and by Notice to Take
6 Deposition, commencing at 9:05 a.m., April 13, 2023, at
7 140 Virginia Street, Richmond, Virginia.

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25 ALSO PRESENT: Caryn Strickland (via videoconference)

1 T A B L E O F C O N T E N T S

2

3 WITNESS: JAMES N. ISHIDA

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10 E X H I B I T S

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1 Who is Cait Clarke?

2 A Oh, is Cait Clarke part of this e-mail?
3 Maybe I'm looking at the wrong e-mail.

4 Q Later on in the page. Sorry. Sorry. Let's
5 move to -- we're going to get to that one later.

6 (Plaintiff's Exhibit 5 marked.)

7 THE WITNESS: Okay so I'm looking at
8 Exhibit 5?

9 BY MS. SUK GERSEN:

10 Q Yes.

11 A Okay. I'm sorry. Can --

12 Q US-614. So can you walk us through what
13 this e-mail -- what is happening in this e-mail?

14 A Okay. You know, I don't recall this, and
15 even looking at it, it just doesn't ring a bell. But
16 in just kind of reconstructing what I'm reading, it
17 looks like Cait Clarke, who was the chief of the
18 Defender's Services Office at the Administrative Office
19 is telling Nancy Dunham, you know, what you see in the
20 e-mail, and I'm commenting on that.

21 And I will confess, I was -- I think I was a
22 little irritated by the fact that there were all these
23 AO employees weighing in and calling Tony and telling
24 him what he needed to do and what he needed to not do,
25 and I just -- I just felt that that -- I don't think

1 they knew there was an ongoing proceeding, so I think
2 they felt, you know, free to do that, but I was a
3 little -- I think I was -- I think it's fair to say I
4 was a little irritated at what was going on and how it
5 could impact the proceedings that we were handling at
6 the time.

7 Q So you say in this e-mail, "I wonder if
8 she's going to walk back her statement and say she only
9 insisted Caryn telework while this is being worked
10 out."

11 Who is "she"?

12 A I think I was referring to Cait Clarke, and
13 if I recall correctly, I think Cait had essentially
14 ordered Tony to do certain things involving the
15 plaintiff, and, you know, I'm just thinking telework
16 might have been one of those.

17 Q What -- why did you say, "I wonder if she's
18 going to walk back her statement"?

19 A Well, instead of coming across as, "I'm
20 ordering you to do that," she might say, "Well, I was
21 just advising Tony to do that."

22 But the way I understood it from
23 Mr. Martinez was he was getting directives from the AO
24 saying, "You have to do this" and "You have to do
25 that."

1 Q And at the time, you believed that
2 Mr. Martinez was accurately describing what happened?

3 A Again, this was based on what he had told
4 me, and I don't know if this was before or after the
5 conversation I had with Lee Ann Bennett that really
6 clarified things for me.

7 Q So how did Lee Ann Bennett -- how did
8 talking to her clarify things?

9 A Well, again, she made those two takeaway
10 points that, "Oh, I didn't know that these
11 conversations were going on, and I didn't know that the
12 Fourth Circuit had ongoing matters involving this
13 case."

14 Q Did you -- were you worried that the AO
15 employees were interfering with the EDR investigation?

16 A In the sense that they were ordering Tony to
17 do certain things, which I thought was not appropriate
18 given that we've already got proceedings that were
19 designed to address the concerns that Plaintiff was
20 raising.

21 Q What were the proceedings that were already
22 ongoing?

23 A Well, we had the Chapter IX proceeding that
24 the investigation was going, and so we -- I mean, my
25 recollection was the AO was asking Tony to do certain

1 things before even the outcome or what was known -- you
2 know, the outcome of the investigation of what had
3 actually happened. They were just ordering him to take
4 preemptive action and really, you know, that -- I felt
5 that was inappropriate.

6 Q And when you say that the proceeding was
7 already ongoing, do you mean that by then you had
8 already appointed Heather Beam?

9 A Well, again, I can't remember at what point
10 that happened, but I'm looking at the date, and this is
11 August 15th. I mean, by this time, we were -- we
12 were all -- you know, I had already heard about the
13 plaintiff's concerns and complaints, and so -- and
14 that -- and, again, I can't remember at what point I
15 got that, but that would have kicked off Chapter IX,
16 the report of wrongful conduct, which I think that had
17 already started when this was -- you know, when this
18 was -- the AO's involvement was coming to light.

19 Q So was your worry that if the AO were
20 involved, that would be prejudging the outcome before
21 the investigation was complete?

22 A I think that's fair to say.

23 Q Once Tony informed you of the concern about
24 the AO and after you had informed the Chief Judge, why
25 were you continuing to communicate with Tony about

1 happened after this exchange. Certainly I could see
2 raising that as part of his deliberations.

3 Q So you said before that Chief Judge Gregory
4 denied the request for qualification.

5 A That's correct.

6 Q So given that Tony was not disqualified,
7 what role was he tasked with performing after the
8 investigative report?

9 A Well, if I remember correctly, this was --
10 it was either at the close or close to the end of the
11 counseling period or at the beginning of the mediation
12 period, and so Tony's role would have been -- as the
13 unit executive of the office, he would have been in the
14 position to, you know, see what he could do to address
15 Plaintiff's concerns about, you know, promotion, the
16 work conditions, and so on and so forth.

17 Q And he had that role because he was the unit
18 executive?

19 A Who had the authority to do that, yes.

20 Q Would you normally ask someone that the
21 investigator thought was biased to participate in those
22 roles?

23 A Well, again, there -- you know, biased in
24 terms -- I mean, I'm struggling to answer that because
25 as the unit executive, he has to make decisions that he

1 feels is in the best interest of not only the employee
2 but the office and other colleagues, and so he may have
3 to take -- he or she may have to take action that
4 people disagree with, and, you know, he could be
5 accused of being biased against the individual
6 employee.

7 MS. SUK GERSEN: Would you please read out
8 Mr. Ishida's previous answer. Not this one but the one
9 before.

10 (Requested record read by the stenographer.)

11 MS. SUK GERSEN: Which exhibit is Tab 1? Do
12 you remember?

13 MR. GERSEN: What's the Bates number?

14 MS. SUK GERSEN: Bates Number 615.

15 MR. KOLSKY: That's Exhibit 2.

16 BY MS. SUK GERSEN:

17 Q Do you have Exhibit 2 there, Mr. Ishida?

18 A I think I do. Yes, I do.

19 Q At the top of the page in the first -- in
20 the paragraph that's an e-mail from you to
21 Mr. Martinez --

22 A Okay.

23 Q -- I'd like to point you to the sentence
24 starting with "You're doing."

25 A Okay.

1 Q "You're doing all you can to protect Caryn."
2 So what did you mean by that? What did you
3 mean when you said, "You're doing all you can to
4 protect Caryn"?

5 A Well, so I think -- I think part of
6 Mr. Martinez's concern was he had taken -- once he
7 received the concerns about sexual harassment the
8 plaintiff made against JP Davis, Mr. Martinez had
9 asked, "Okay" -- he did X, Y, and Z, and I think what
10 he asked me too was, "Can you think of anything else I
11 need to do?"

12 And my response is, "Well, I think, to me,
13 it appears like, you know, you've taken the appropriate
14 steps to protecting the plaintiff from JP Davis."

15 Q What were the appropriate steps?

16 A As I recall, it was physical separation. He
17 had allowed Plaintiff to telework, and he had
18 removed -- or he said he had removed the plaintiff from
19 JP's chain of command.

20 Q Why did you think that Ms. Strickland needed
21 protection?

22 A Because she had told me on a number of
23 occasions she was afraid of Mr. Davis, and I think -- I
24 remember at least one time where she said, "I'm
25 physically afraid of him."

1 Q Did you believe her?

2 A I had no reason to doubt her, and she
3 seemed -- if I recall, she seemed very upset, so I took
4 her at her word.

5 Q So taking her at her word, you felt that she
6 needed protection?

7 MR. KOLSKY: Objection. Misstates
8 testimony.

9 BY MS. SUK GERSEN:

10 Q Did you believe she needed protection?

11 A I believed that she had felt that she was
12 physically threatened by JP Davis.

13 Q And you believed her?

14 A Again, yes. I had no reason to doubt her.

15 Q Is there any special provision in the EDR
16 plan that applies if a unit executive is the person who
17 is alleged to be a violator of the EDR plan?

18 A Say that again. I'm sorry.

19 Q Is there any provision in the EDR plan that
20 would apply in the circumstance where a unit executive
21 is themselves alleged to have violated the EDR plan?

22 A So the EDR plan would apply to unit
23 executives equally.

24 Q So does that mean that the unit executive
25 would be the person in charge of responding to an

1 A I wouldn't read it that way, because the
2 examples in the report that I recall reading that the
3 investigator was concerned about was -- were statements
4 that the Defender had said that may have been
5 inappropriate and assurances of things he would do that
6 he apparently had not done.

7 So to say that you can construe this to also
8 include that, well, the investigator concluded that
9 Mr. Martinez did not do everything in his power to
10 protect, I don't think I would read it that way at all.

11 MS. SUK GERSEN: Okay. Let's take a break.

12 THE WITNESS: Okay.

13 MS. SUK GERSEN: Thank you.

14 THE WITNESS: Sure.

15 MS. SUK GERSEN: Thank you so much for your
16 endurance.

17 (Break in proceedings.)

18 BY MS. SUK GERSEN:

19 Q So switching topics a bit, can you tell me
20 about your communications with JP Davis during the EDR
21 investigation process?

22 A Sure. So I think -- I think I'd gotten a
23 couple of, I would say, outreaches from JP, Mr. Davis.
24 The first time he had contacted me, I was a little
25 concerned that he did that, so I had asked him, you

1 know, "Please don't contact me." I raised it with
2 Mr. Martinez and -- because I was just concerned about
3 that.

4 Now, I understand what Mr. Davis wanted to
5 know was he just wanted an idea of the process, but I
6 just told him that it was not something I was
7 comfortable with him doing, and I'd asked him not to do
8 that again.

9 Q Why were you concerned?

10 A About Mr. Davis reaching out to me?

11 Q (Nodding head.)

12 A Well, I didn't want anybody to have the
13 perception that Mr. Davis was trying to influence the
14 process or the investigation. I can't remember at what
15 stage the investigation was proceeding at, but I was
16 concerned about how others would perceive his outreach.

17 Q What about his outreach to you made you
18 concerned about the perception of potentially
19 interfering with the investigation?

20 A Well, I think -- I think, again, it's --
21 you've got an ongoing investigation. Somebody who
22 could be at the heart of that investigation reaches out
23 to me to have discussions. And I think, you know, a
24 reasonable person might conclude that there was an
25 attempt to influence or guide the investigation in some

1 way, and that's why I was concerned about Mr. Davis's
2 outreach. So I mentioned it to him, but I also raised
3 that with Mr. Martinez as well.

4 Q Was there anything in his outreach in terms
5 of the content that made you concerned?

6 A Well, he just -- he wanted to know just
7 really, where -- what the process was. Because the way
8 I remember the conversation, I mean, he was -- it was
9 very anxiety-provoking for him. I think he might have
10 mentioned it's been a living hell.

11 And so, you know, it's almost like the sword
12 of Damocles was hanging over him, and he just kind of
13 wanted an idea of where we are in the process because
14 it was just a lot of uncertainty that he was dealing
15 with.

16 Q In the e-mails, in the reach-outs to you,
17 did he describe himself as a victim of Caryn
18 Strickland's malicious conduct?

19 A I can't remember specifically what he said.

20 MS. SUK GERSEN: This exhibit is being
21 marked as 9.

22 (Plaintiff's Exhibit 9 marked.)

23 BY MS. SUK GERSEN:

24 Q So can we turn to US-3023 in Exhibit 9.

25 A Okay.

1 Q And the e-mail is on December 3rd, 2018, and
2 it is addressed to you from JP Davis.

3 A Uh-huh. Okay.

4 Q Is this one of the e-mails that made you
5 concerned about Mr. Davis reaching out to you?

6 A Well, again, I think when Mr. Davis reached
7 out to me, I wasn't sure why he was doing it, and then
8 because of, you know, what I just said about the
9 perception. But he clarifies it by saying, again, all
10 he wants to know is where are we procedurally.

11 And so I felt comfortable telling him where
12 we were procedurally, but I didn't want to get into any
13 more detail than that because, again, his concern is,
14 you know, he's, you know, in this living hell and wants
15 some -- some clarification as to where we're at.

16 Q Is this the first e-mail where JP Davis
17 reached out to you about the investigation, or was
18 there another chain that we're not aware of?

19 A Yeah. I don't -- I don't know, but if you
20 look at page 3020 where Mr. Davis is responding back to
21 me, if you look at the second paragraph where he says,
22 "First, it was never my intent to unduly intrude on
23 your schedule," what makes me think there was something
24 before that is I recall vaguely, when I had mentioned
25 to Mr. Martinez my concern about JP reaching out, I

1 think -- I think there was -- I can't remember how this
2 came up, but I think Mr. Martinez was concerned,
3 certainly about the appropriateness of reaching out.

4 But I think he was also concerned about
5 Mr. Davis taking up my time. So in reading this
6 response, it makes me think that this happened later,
7 after another -- this -- I guess all I can say is it
8 looks like from the way this e-mail string is going, is
9 this wasn't the first exchange.

10 Q This is in December of 2018 --

11 A Uh-huh.

12 Q -- while both Chapter IX and Chapter X are
13 already ongoing?

14 A Yes.

15 Q When did you mention your concerns about
16 JP Davis reaching out to Mr. Martinez?

17 A I don't remember the specific date, but it
18 was soon after I had gotten that first inquiry from
19 Mr. Davis.

20 Q So are you aware that Tony counseled JP on
21 December 4th, 2018, based on JP's interactions with
22 you?

23 A I'm not aware of that.

24 Q Do you believe it was proper for JP to
25 contact you about what he said were Caryn's false

1 claims?

2 A I don't -- I don't remember what Mr. Davis
3 had expressed to me about the plaintiff's claims.

4 Q If you look on the bottom of 3023, that --

5 A Okay.

6 Q The first e-mail of the chain that we have
7 in front of us, on December 3rd, 2018, "It's been four
8 months since Caryn made her false harassment claims,
9 and with the facts now reported, I believe everyone now
10 recognizes that no harassment or physical threats ever
11 occurred."

12 Do you know -- oh, go ahead.

13 A No. No. No. I'm just -- I was waiting for
14 your question.

15 Q Do you know why he's saying the facts are
16 now reported?

17 A I'm not sure what he meant by that.

18 Q Do you know why he says there is a finding
19 in the investigation?

20 A I'm sorry. Where is that?

21 Q "With the facts now reported."

22 A Okay. Yeah. Again, I don't know what he
23 means by that.

24 Q Can you turn to US-3020, please.

25 A Okay.

1 Q This is the first page of the exhibit.

2 A Okay.

3 Q At the bottom of the page, JP Davis writes
4 to you on December 4th, 2018, "Heather has produced a
5 written recitation of facts sufficient, to my
6 understanding, for a decision-maker to immediately
7 conclude there was no sexual harassment."

8 Did you understand what he was referring to?

9 A No.

10 Q Did it make you think that he might have
11 been told about Heather Beam's recitation of findings
12 or facts?

13 A Yeah. I don't know, so it's hard to answer,
14 but -- and, again, this is just -- you asked me the
15 question of, you know, what I think this means. It
16 could very well be that the investigator had drafted
17 facts as she understood them and wanted to get
18 confirmation, but I don't know that that's -- that's
19 pure speculation.

20 Q Well, if it -- if it is -- if it were true
21 that Heather Beam had drafted her written recitation of
22 facts, how would JP Davis know that that's the case?

23 A Well, again, I don't --

24 MR. KOLSKY: Objection. Calls for
25 speculation.

1 You can answer.

2 THE WITNESS: Again, I don't know.

3 BY MS. SUK GERSEN:

4 Q When did you mention your concerns about
5 JP Davis to Mr. Martinez?

6 A I'm sorry. Say that again.

7 Q When did you mention your concerns about
8 JP Davis's e-mails to you to Mr. Martinez?

9 A Well, again, as soon as Mr. Davis had
10 reached out to me that first time, I raised it with
11 Mr. Martinez.

12 Q What did you say to Mr. Martinez about that?

13 A So the best of my recollection, as I was --
14 I reached out to Mr. Martinez, told him what happened.
15 I expressed concerns about this, and I thought that
16 this was inappropriate for Mr. Davis to do. Again --
17 and I think I remember saying something about the
18 concerns about how this would be perceived.

19 Q So did you ever disclose the findings of the
20 draft report that Heather produced to anyone?

21 A No. I, you know, did not receive any drafts
22 or anything preliminary.

23 So my view on this was Heather was appointed
24 to investigate Plaintiff's allegations, and so at that
25 point, you know, it was -- I wanted, really, nothing to

1 do with the investigation. I let Heather dictate how
2 that would go. So she didn't give me any draft. She
3 didn't, you know, show me anything.

4 Q We have in the record that you received an
5 earlier report from Heather Beam --

6 A Uh-huh.

7 Q -- earlier than the one that we reviewed
8 here --

9 A Uh-huh.

10 Q -- on November 19th.

11 A Uh-huh.

12 Q Was that a draft of Heather Beam's
13 investigative report?

14 A I think she had submitted to me with the
15 intent that this was her final report.

16 Q Can you clarify?

17 A So she had given me a copy of the
18 investigation report that she had completed, and so I
19 looked at it, and it had a recitation of the events --
20 a chronology of the events that happened along with a
21 sizeable set of attachments, and -- but the one thing
22 that I didn't see in there was her impressions.

23 And we had -- we had a conversation, I
24 think -- I can't remember when, but Heather mentioned
25 that in the process of conducting her investigation,

1 she had formed, you know, some views, some opinions,
2 she had some suggestions, but they weren't included in
3 the report.

4 So I said, "Well, I think it would be
5 helpful to have all of your impressions in the report
6 because you obviously had interviewed people
7 face-to-face, and so you would have information that we
8 would not have." So I -- in essence, what I did was I
9 asked her to include those impressions and her thoughts
10 in the report. So she went back and then revised the
11 report to include those observations and her
12 recommendations as well.

13 Q What do you mean by impressions and
14 observations?

15 A Well, so -- and I'm trying to remember --
16 the conversation I had with Heather was -- I don't know
17 if she used those words, but the sense I -- what I was
18 hearing her to say was she had other thoughts about the
19 case that were not included in the report, and so I had
20 asked her, you know, to create a full, complete, and
21 accurate account of what she found during the course of
22 her investigation. I had asked her to include those in
23 the report.

24 Q So when you received these e-mails from
25 JP Davis that we just reviewed, including the one

1 talking about the reports, factual findings, did you
2 take him at the time to mean that he was told about the
3 investigation's findings before Ms. Beam's report was
4 final?

5 A No, I didn't. I didn't read it that way.

6 Q You didn't read it that way meaning?

7 A That -- I mean -- well, again, I don't know
8 what Heather did, so I can't speak conclusively to
9 that, but you had asked me what a passage means
10 about -- where was it? -- "with the facts now
11 reported." So, again, I don't know what Heather did.
12 I don't know if she showed Mr. Davis a copy of the
13 report or what happened, but I don't know what JP means
14 by "the facts are now reported."

15 Q But you didn't take those words to mean,
16 when you read the e-mail, that he had been told about
17 the November report findings?

18 A Well, I guess because I didn't know what he
19 was talking about, I hadn't even considered that as a
20 possibility.

21 Q When were the findings disclosed to anyone
22 other than yourself and Heather Beam?

23 A Well, I think -- I think Chief Judge Gregory
24 had a copy of it as soon as I received it because I
25 responded back to Heather thanking her for the job she

1 A Yes.

2 Q -- regarding JP Davis or Tony Martinez.

3 A I'm aware of two or three -- I think what I
4 said was I'm aware of two or three involving the office
5 of Mr. Martinez. I don't think I said that there were
6 any involving Mr. Davis.

7 Q Were you, at any point during
8 Ms. Strickland's complaint and proceeding, concerned
9 about a pattern of complaints against JP Davis or
10 Mr. Martinez?

11 A Well, I think -- I think I was concerned
12 about that. There were multiple coming within a
13 relatively short period of time, so I remember being
14 somewhat concerned about that.

15 Q What were your concerns?

16 A Well, mainly, you know, if -- you know, why
17 are there multiple complaints coming in such a short
18 period of time? I mean, what does this mean?

19 Q Did you do anything about that concern?

20 A Well, we wanted to, you know, certainly look
21 at why these -- you know, why these individuals were
22 bringing these, you know, complaints, and we
23 certainly -- we didn't want to prejudge anyone or, you
24 know, the office, but we wanted to make sure that we
25 looked at, you know, each of the complaints as they

1 were brought to us.

2 Q Did you speak with Chief Judge Gregory about
3 the concern you just mentioned?

4 A Well, again, in my role as the EDR
5 Coordinator, whenever I get, you know, like, say, a
6 Chapter IX or Chapter X, I would always let him know
7 that this is a -- "Chief, by the way, this is what" --
8 "I received this complaint or this request" -- "this
9 report of wrongful conduct." So I would let him know
10 every time I received one what would happen.

11 Q So you testified just now that you were
12 concerned about a potential pattern with respect to
13 Chief Judge -- sorry -- let me start again.

14 You testified that you were concerned about
15 a potential pattern regarding JP Davis or Mr. Martinez.

16 A No. I don't think that's accurate to say
17 what I meant. What I said was, I was concerned that
18 there were a number of these complaints filed in such a
19 short period of time. I don't -- I never mentioned
20 pattern.

21 Q So given the short [sic] number of
22 complaints filed in a short period of time and your
23 concern about it, did it worry you that Mr. Martinez
24 would remain in charge of any complaints brought
25 against him?

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Julia A. Bammel, RPR, CSR, Notary Public
3 in and for the Commonwealth of Virginia at large, and
4 whose commission expires May 31, 2024, do certify that
5 the aforementioned appeared before me, was sworn by me,
6 and was thereupon examined by counsel, and that the
7 foregoing is a true, correct, and full transcript of
8 the testimony adduced.

9 I further certify that I am neither related
10 to nor associated with any counsel or party to this
11 proceeding nor otherwise interested in the event
12 thereof.

13 I further certify that the deponent's right
14 to review the transcript was reserved.

15 Given under my hand and notarial seal at
16 Charlottesville, Virginia, this 24th day of April,
17 2023.

18 
19 _____

20 Julia A. Bammel, RPR, CSR

21 Notary Public Registration No. 7205414

22 Commonwealth of Virginia at Large

23

24 Job No. 49661

25